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December 16, 2020

By ECF

Honorable Margo K. Brodie  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Federal Defenders of NY, Inc. v. Federal Bureau of Prisons, et al.*  
Civil Docket No. 19-cv-660 (Brodie, J.)(Gold, M.J.)

Dear Judge Brodie:

This Office represents Defendants Federal Bureau of Prisons (“BOP”) and the Warden of the Metropolitan Detention Center (“MDC”) in the above-referenced matter. We write pursuant to the Court’s December 2, 2020 order requiring Defendants to provide a status report ahead of the December 18, 2020 conference in this matter addressing legal access for individuals housed at the MDC and the Metropolitan Correctional Center in New York, New York (“MCC”).

MDC and MCC continue to offer legal access by telephone and video-teleconference (VTC) every weekday, during the morning, afternoon, and evening. In addition, MCC continues to offer in-person visitation, but due to a recent surge of COVID-19 transmission within the MDC, the Warden of that institution has temporarily suspended in-person visitation there, as discussed below.

#### **A. In-Person Legal Visitation**

MCC continues to offer in-person legal visiting seven days per week, by appointment. The MCC (and MDC when visiting is not suspended) employs various steps to ensure the safety of visitors, including regular temperature and symptom screening of all visitors, the use of individual attorney rooms to ensure social distancing, and the use of masks throughout the facility.

On December 10, the Warden of MDC suspended in-person visitation, effective December 11 and continuing for at least two weeks, because of an uptick in COVID positivity, resulting in a fourth unit at the facility being placed in quarantine status as a COVID mitigation measure.<sup>1</sup> All

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<sup>1</sup> While not directly relevant to this litigation, Defendants note that both facilities continue to perform COVID testing and to track the number of COVID-positive inmates and staff. As of this writing, MDC has performed 4,043 COVID tests on inmates, of which 120 were positive, resulting in a positivity rate of 2.9%. Fifty-eight staff members have reported testing positive and have quarantined as required. No inmates at MDC have required hospitalization as

counsel with appointments during the suspension period have been notified so that they can modify their plans, or seek a call or VTC. The Warden will continue to monitor the infection rate closely with a view toward re-opening visitation as soon as he determines it is safe to do so.

We continue to work through the mediation process to address an issue raised by Plaintiff regarding staff use of masks. Specifically, the Warden has announced that he will be following up with staff who fail to comply with his mask directive, and where warranted, issue appropriate discipline.

Regarding air quality testing, we have provided Plaintiff with detailed air circulation test results, and recently have obtained approval from BOP's central office for additional vapor testing at both the MCC and MDC. That additional testing will be scheduled upon the resumption of in-person visitation.

Finally, BOP continues to work on deploying an online scheduling system for in-person visitation and we expect that the system will be up and running shortly after the resumption of in-person visitation at the MDC.

## **B. Attorney Calls and VTCs**

In light of the challenges posed by the ongoing pandemic, both facilities continue to offer a full schedule of telephone calls and VTCs on weekdays, in the morning, afternoon, and evening.

We continue to adjust to the changes in demand for attorneys' calls and VTC, including the increase in demand related to the suspension of in-person visitation. To that end, additional telephone lines have been ordered for all units at the MDC. Extra lines already have been installed on the newly quarantined units in order to meet the heightened demand, and the facility expects to install lines on the other units shortly after the equipment arrives next week. We expect that these additional lines will allow the institution more flexibility and capacity moving forward. Additionally, all units remain able to conduct VTCs, except for the medical isolation unit.

Defendants believe the mediation process continues to be helpful and we thank the Court for its consideration of this matter.

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a result of COVID infection, and currently, no inmates are seriously ill with COVID symptoms. Moreover, there have been no COVID-related deaths among inmates or staff at the MDC or MCC.

Respectfully submitted,

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